

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

MARTIN DURANT,	:	
	:	
Plaintiff,	:	C.A. NO. 04-1534 (KAJ)
	:	
v.	:	
	:	JURY TRIAL DEMANDED
PERFECT CARE NURSES, INC.,	:	
	:	
Defendant.	:	

INTERIM STATUS REPORT

This 1st day of June, 2005, the parties having satisfied their obligations under Fed. R. Civ. P. 26(f) in preparation for a pretrial scheduling conference pursuant to Fed. R. Civ. P. 16 and D. Del. LR 16.2(a) and (b), and per the Scheduling Order issued on March 8, 2005, Plaintiff Martin Durant, by and through the undersigned counsel, hereby submits his Interim Status Report:

1. **Jurisdiction and Service.** The Court has subject matter jurisdiction, all parties are subject to the Court's jurisdiction and no party remains to be served.

2. **Substance of the Action.** Plaintiff, Martin Durant, a former employee of Perfect Care Nurses, Inc., filed this action in the United States District Court in and for the District of Delaware on December 20, 2004. On January 10, 2005, Defendant filed its Answer to the Complaint. Plaintiff's action is for past wages owed in the nature of unpaid overtime pay, as well as other damages and remedies. Plaintiff alleges that Defendant violated and continues to violate the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq., as well as the applicable United States Department of Labor Regulations, including 29 C.F.R. § 541.103 et seq. and the Delaware Wage Payment and Collection Act, Chapter 11, Title 19 of the Delaware Code pursuant to 19 Del. C. § 1113(a). The basis of the action is that Defendant misclassified Plaintiff

as an employee who was exempt from the overtime requirements of the FLSA and applicable regulations and failed and refused to pay one and one-half his regular rate of pay for all hours worked in excess of forty (40) hours per week.

3. **Identification of Issues.**

A. What is the total number of overtime hours that Plaintiff worked during his employment with Defendant?

B. Whether the practices of Defendant caused Plaintiff to experience conscious pain and suffering and other emotional harm?

C. Whether Defendant showed reckless disregard for the fact that its pay policies and/or practices violated the FLSA?

D. Whether Defendant's violations of the FLSA were committed willfully?

E. Whether Plaintiff is an "employee" within the meaning of 19 Del. C. § 1101(a)(4)?

F. Whether Defendant is an "employer" within the meaning of 19 Del. C. § 1101(a)(3)?

4. **Narrowing of Issues.** None.

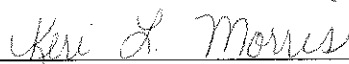
5. **Relief.** Plaintiff in this action seeks damages for past and ongoing unpaid overtime wages, unpaid mileage reimbursement, interest, liquidated damages as provided by law, damages pursuant to the Delaware Wage Payment and Collection Act, reasonable attorneys' fees, expert witness fees and costs, court costs, punitive damages and such other relief and damages as may be provided by law. Furthermore, Plaintiff requests that Defendant be permanently enjoined from continuing the policies and/or practices identified herein.

6. **Amendment of Pleadings.** None.
7. **Joinder of Parties.** No other parties need to be joined.
8. **Discovery.**

Paragraph 3.c of the Scheduling Order provides that all discovery must be initiated so that it will be completed on or before July 29, 2005. Defendant submitted its Federal Rule 26(a) Initial Disclosures on March 8, 2005 and Plaintiff submitted its Federal Rule 26(a) Initial Disclosures on April 12, 2005. The parties have begun written discovery and the deposition of Plaintiff was conducted on May 24, 2005.

9. **Estimated trial length.** Trial should take two (2) days. The parties will endeavor to reduce the length of trial by entering into stipulations as necessary.
10. **Jury trial.** A jury trial has been demanded by Plaintiff.
11. **Settlement.** A mediation with Magistrate Judge Thyne is scheduled for October 17, 2005.
12. **Other Matters.** None.

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